

REMARKS

Reconsideration and allowance of the above-reference application are respectfully requested. Claims 5, 24, and 39 are amended, and Claims 1-3, 5-22, 24-37, and 39-49 are pending in the application.

It is believed claims 5, 24, and 39 as amended overcome the rejection under 35 USC 112, second paragraph. Hence, this rejection should be withdrawn.

Claims 1, 2, 10-12, 16, 20, 21, 29-31, 35, 36, 44, 45 and 49 standard rejected under 35 USC 103 in view of Gibson. This rejection is respectfully traversed.

Applicant strenuously traverses the rejection because it demonstrates a remarkable disregard for the explicit claim limitations. The Examiner is respectfully reminded that each and every claim limitation must be considered. As specified in MPEP §2143.03, entitled "**All Claim Limitations Must Be Taught or Suggested**": "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 'All words in a claim must be considered in judging the patentability of that claim against the prior art.' *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." MPEP §2143.03 at 2100-139 (Rev. 3, Aug. 2005).

In particular, the Examiner has deliberately disregarded the explicit claim limitations of independent claims 1, 20, and 35 that specify "selectively terminating the instance *prior to completing the sequence of messaging operations* based on detecting, *at a prescribed location in the prescribed sequence, a prescribed variable* ... [specifying] the incoming message corresponds to a second message type incompatible with the first type."

In addition, the Examiner has deliberately disregarded the explicit claim limitations of independent claims 11, 16, 30, and 45 that specify "terminating the instance, *prior to completion of executing the prescribed sequence of messaging operations ... in response to the reject message*."

In both of these instances, the rejection fails to identify any portion of Gibson that even suggests that an executable instance should be terminated *prior to completing a prescribed*

sequence of messaging operations for a given type of incoming message, as claimed. Rather, the rejection relies on column 4, lines and 59-64 as a teaching of the claimed terminating prior to completing the prescribed sequence of messaging operations, and of the claimed prescribed variable / reject message.

This cited portion of col. 4, lines 59-64, however, describes no more than simply determining whether an incoming call is a voice call, a fax call or a data call:

After the CLI capture facility 350, the call 300 is then monitored by a fax detection facility 305 which operates to detect whether the call 300 is a voice call, a fax call or a data call. The fax detection facility 305 then advises the message selector 310 whether or not the incoming call 300 is a fax call or a voice call.

As apparent from the foregoing, the cited portion of Gibson describes only that the fax detection facility 305 advises the message selector 310 whether or not the incoming call 300 is a fax call or a voice call. There is absolutely no disclosure or suggestion whatsoever of "terminating the instance ... based on detecting ... a prescribed variable set [or a reject message]", as claimed. Rather, the cited portion of Gibson simply identifies the type of incoming call.

In addition, the Final Action mischaracterizes the teachings of Gibson, by suggesting on page 4 that Gibson "advises the message selector 310 to continue with processing of the appropriate call type, moving the call information to *either* FAX download 330 *or* Voice Download 355 based on the detection result": Gibson provides no such teaching, as demonstrated by the inconsistency in the Examiner's subsequent arguments that "Gibson shows that the incoming call constitutes an initiation of messaging for both voice and fax call types" and that "Gibson shows that a voice message is downloaded and transmit it to the miss dialing terminal regardless of whether the call is determined to be a fax call or a voice call." Further, as described in detail below, Gibson explicitly teaches that the voice message is transmitted by the GIRAFF 220 in response to both fax and voice calls, and that both the voice message and the fax message are downloaded in response to a received fax.

Moreover, the Final Action disregards the explicit claim limitation in each of the independent claims of the terminating including "*removing the first data from the first data*

structure", where the first data was written into the first data structure as part of the execution of the instance being terminated. Rather, the Final Action simply relies on the above-quoted column 4, lines 59-64, which teach no more than detecting the type of incoming call.

In fact, Gibson explicitly teaches away from the claimed "removing the first data from the first data structure" by requiring that the data obtained by the CLI capture facility 350 to be stored in step 425, and downloaded even after the original voice message transmitted by the GIRAFF 220 in step 465 has been completed. In particular, Gibson explicitly specifies the voice message is transmitted in step 465 by the GIRAFF 220 in response to both fax and voice calls to ensure that fax callers, in addition to receiving a fax message and advising them they have mis-dialed, also are given the opportunity to hear the voice message (column 7, lines 45-50). Moreover, the connection of the incoming call 300 is not disconnected until after the audible message has been played. *Id.*

Consequently, Gibson requires that the CLI data is preserved and retrieved at a later time that is sufficient for the original fax terminal 100 to reset itself:

After disconnecting the incoming call which had been established as a result of the user's dialling error, the message selector 310 will instruct the call set-up facility 325 to open a new connection to the terminal 100. This new connection to the terminal 100 will be established *after a sufficient period has elapsed for the terminal 100 to clear down* after the previous connection was disconnected by the disconnect facility 320.

In parallel with establishing a new connection to the user's terminal 100, the message selector 310 selects a fax message from a message database 335 and downloads it to a fax transmission facility 330. *The fax transmission facility 330 then transmits this fax message to the terminal 100 using the new connection set up by the call set-up facility 325.* Once the message has been transmitted, the connection to the terminal 100 is disconnected by the disconnect facility 320.

The fax transmission facility 325 is not triggered directly by the fax detection facility 305 and the CLI capture facility 300. *The CLIs associated with dialling errors are stored in the message selector 310 and then accessed and provided to the fax transmission facility 325 at a later time.* This later time can be determined by one or two factors, such as the time taken to clear down the originating call from the user, and/or the time at which the fax transmission facility 325 has available capacity. This enables the GIRAFF 220 to

cycle through reception of misdialled fax calls at a similar rate to the rate at which it cycles through misdialled voice calls as there is no equipment tied to an incoming call, waiting for it to clear down. Instead, the CLI (and other data) is simply stored, then sent to the fax transmission facility 325 after a suitable delay.

This facility of storing data in respect of a misdialled call and then sending faxes later, in respect of the stored data, decouples the amount of equipment needed for outgoing faxes from the number of incoming misdialled calls.

(Col. 5, lines 10-45).

Hence, Gibson explicitly requires that the CLI data stored as a result of the incoming fax call from the user terminal 100 is not removed at the termination of the first fax call, but that the CLI data is preserved for subsequent retrieval in order to generate the *second fax call at a later time*. (See also col. 9, lines 27-42).

Consequently, there is no disclosure or suggestion of the claimed terminating including "removing the first data from the first data structure", as claimed.

In addition to the foregoing, the assertion that it would have been obvious to one of ordinary skill in the art to modify Gibson to enable selective termination of the instance is without foundation and contrary to the explicit teachings of Gibson. In particular, the Official Action asserts that "terminating the voice call operations prior to the voice message downloading and transmission would eliminate unnecessary call processing and enable the system to operate more efficiently."

This assertion by the Examiner deliberately disregards the explicit teachings of Gibson that specify that a voice message transmitted by the GIRAFF 220 is preferred for both fax and voice calls:

Preferably, a voice message is transmitted by the GIRAFF 220 in response to both fax and voice calls. *This ensures that fax callers, in addition to receiving a fax messaging advising them they have misdialled, are also given the opportunity to hear the voice message and ensures consistency of treatment if some routes and exchanges are not equipped with GIRAFF.*

(Col. 7, lines 47-53).

After this analysis, both a fax and a voice message are preferably identified within the message database as being the messages that should be transmitted by the GIRAFF 220.

(Col. 9, lines 10-12)

... the CLI at step 645 is used to select the appropriate message from the selection of messages identified, based on the comparison of the dialling error with the message error database and the CLI retrieved.

This process will select both a fax and a voice message from the database.

(Col. 11, lines 3-8).

Further, the assertion that terminating the voice call operations prior to the voice message downloading in order to "enable the system to operate more efficiently" is inconsistent with the explicit teachings that relies on distributed systems to add capacity as needed:

FIG. 7 details an embodiment of the GIRAFF system 220 which uses a "Minor Applications Platform" (MAP) to host the service. ... One or more MAP systems may be used to provide the service, one MAP system acting as backup or as additional capacity. Incoming calls can be distributed among the MAP systems to ensure as far as possible that each system is equally used.

(Col. 11, lines 18-26)

Hence, Gibson would actually prefer to add capacity, rather than terminate the voice call operations, especially since Gibson considers it an unimportant consideration that fax colors be "given the opportunity to hear the voice message".

Consequently the motivation to modify is unfounded and improper because there is no evidence as to why once skilled in the art should disregard the explicit teachings of Gibson: the reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention (see MPEP 2141.02 at page 2100-95 (Rev. 1, Feb. 2000) (citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 22 USPQ 303 (Fed. Cir. 1983), cert. denied, 469

U.S. 851 (1984))).

The Examiner is reminded that the proposed modification cannot change the principle operation of a reference or render it unsatisfactory for its intended purpose, because fax callers no longer would be afforded the opportunity to hear the voice message, as suggested by Gibson. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." MPEP § 2143.02, Rev. 2, May 2004 at p. 2100-132 (Citing In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). "If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." Id. (Citing In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). Cf. MPEP §2145.III at page 2100-160 (Rev. 2, May 2004) ("the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose.").

Regardless, even if one skilled in the art would have modified Gibson as suggested by the Examiner, a hypothetical combination still would neither disclose nor suggest "removing the first data from the first data structure" as part of the termination of the instance, because Gibson explicitly requires that the CLI data be preserved in order to enable the fax transmission facility 332 transmit the reply fax as described in column 5 and Figure 4b at steps 4950 through 4965.

In fact, Gibson cannot be modified as claimed (removing the first data from the first data structure), because the proposed modification would render Gibson inoperable because Gibson relies on the CLI data (i.e., the first data structure) after the first phone call has been terminated, in order to be able to initiate the second fax call! Hence, the proposed modification would render Gibson inoperable.

For these and other reasons, the rejection of independent claims 1, 11, 16, 20, 30, 35, and 45 should be withdrawn.

It is believed the remaining dependent claims are allowable in view of the foregoing.

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

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To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a), to Deposit Account No. 50-1130, under Order No. 95-462, and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L R Turkevich', with a long horizontal flourish extending to the right.

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